

May 3, 2016

VIA FOIA ONLINE

Regional Freedom of Information Officer U.S. Environmental Protection Agency, Region 10 Office of Ecosystems, Tribal and Public Affairs 1200 6th Avenue ETPA-124 Seattle, WA 98101

Re: Freedom of Information Act Request Regarding Fish Consumption Standards in Alaska

Dear FOIA Officer:

Earthjustice, on behalf of Southeast Alaska Conservation Council (SEACC), submits this request for records pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

Documents Requested:

We request copies of all memoranda, studies, reports, data, correspondence, comments, conversation records, files, electronic mail records, or other documents which have been generated, received, kept and/or considered by the Environmental Protection Agency (EPA) since April 2010 regarding:

- 1. The fish consumption component of water quality standards in Alaska; and,
- 2. The lifetime cancer risk estimate component of water quality standards in

This request does not include copies of documents or any other information already available on EPA websites.

We prefer to receive documents responsive to our request in electronic format, if possible.

We expect EPA's response will comply with the Attorney General's March 2009 memorandum, reiterating President Obama's directive that in "the face of doubt, openness prevails." Attorney General, Memorandum for Heads of Executive Departments and Agencies at 1 (March 19, 2009). Accordingly, EPA should apply a presumption in favor of disclosure and consider that it "should not withhold information simply because it may do so legally." *Id*.

Fee Waiver Requested:

We request a waiver of any fees associated with this request. FOIA mandates that agencies waive or reduce search and copying fees where the disclosure is "in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii).

In addition to the statutory direction, EPA has issued regulations outlining factors that it considers in deciding whether a fee waiver is warranted, including whether: (1) the request concerns the operations or activities of the government; (2) the disclosure will likely contribute to an understanding of Government operations or activities; (3) the disclosure will contribute to public understanding; (4) the disclosure is likely to contribute "significantly" to public understanding of Government operations or activities; and (5) the disclosure is not primarily in the requester's commercial interest. *See* 40 C.F.R. §§ 2.107(l)(2)-(3).

As one court explained, if a non-profit organization has "identified why they wanted the administrative record, what they intended to do with it, to whom they planned on distributing it, and the [relevant] expertise of their membership," then a waiver is appropriate. *Ctr. for Biological Diversity v. Office of Mgmt. & Budget*, 546 F. Supp. 2d 722, 727 (N.D. Cal. 2008) (internal quotation omitted). The information provided below demonstrates that the requesting groups meet the required criteria and are entitled to a full fee waiver.

1. The Request Concerns Government Operations and Activities.

The Clean Water Act requires states to set water quality standards that are protective of the "fishable and swimmable" goals of the Act. *See* 33 U.S.C. § 1313. In particular, water quality standards are required to ensure that designated uses of waters are achieved and maintained. EPA is directed to review and approve or disapprove states' water quality standards, and if EPA disapproves a standard or determines a revised or new standard is necessary to meet the requirements of the Clean Water Act, EPA is required to step in and promptly promulgate the standards for the state. *See id.* § 1313(c)(4).

The State of Alaska uses in its standards the lowest fish consumption rate in the nation despite the fact that residents in Alaska consume more fish than any other state. The State of Alaska has never adopted an Alaska-based fish consumption rate as part of its state water quality standards, and instead continues rely on the outdated National Toxics Rule that provides for consumption of only 6.5 grams of fish or shellfish per day. The science demonstrating the need to update the fish consumption rate has been available for at least 15 years.

Given Alaskans consume far more fish than most other U.S. populations and the State of Alaska still has never adopted contemporary, scientifically-based fish consumption standards, Alaskans face increased exposure to any contaminants that might be present in these fish.

Accordingly, this FOIA request directly concerns the operations and activities of the government in managing water quality and public resources in Alaska.

2. Disclosure Will Contribute to Public Understanding of EPA Operations and Activities.

There is a direct connection between the requested records and SEACC's interest in and desire to inform the public about EPA's water quality oversight in Alaska. The requested records relate to the government's evaluation of fish consumption standards and overall water quality in Alaska. Access to these records will allow the requesting group to understand the exchange of information between EPA and the State of Alaska regarding fish consumption standards. Consequently, the requested documents are critical to a meaningful assessment of EPA's actions and a thorough public understanding of the government's operations and activities in Alaska.

SEACC is a non-profit, public-interest organization, with nearly 800 members, a majority of whom are Alaskans from all walks of life, including commercial fishermen, Alaska Natives, tourism and recreation business owners, small timber operators and high-value-added manufacturers, hunters, and guides. SEACC communicates with its members and the general public through various means, including its website, Facebook and Twitter accounts, its newsletter "The Ravencall," other publications, action alerts, and public meetings. SEACC's mission "is to protect the special places of the world's largest temperate rainforest, promote conservation, and advocate for sustainability in human use of natural resources. Inspired by the land, wildlife, cultures, and communities of Southeast Alaska, SEACC strives to insure this interconnected whole exists for future generations." To achieve this purpose, SEACC advocates, on behalf of its members, for the conservation, protection, and wise long-term use of these resources. More specifically, members of SEACC use and enjoy the waters in the State of Alaska for cultural values, traditional activities, fishing, guiding, tourism, kayaking, hiking, photography, and other recreation. Its members' use and enjoyment of these waters and their aquatic resources will be harmed if credible, scientifically-supported fish consumption standards are not adopted. To protect those interests, SEACC has petitioned EPA to implement an interim fish consumption rate until such time as the Alaska Department of Environmental Conservation establishes local or regional rates. SEACC did so because of the value and importance of the Alaska's waters to its members and their communities for cultural values, traditional uses, tourism, guiding, fishing, and recreation.

SEACC intends to disseminate information that may be available in the requested records through various means, including "The Ravencall", its website, Facebook and Twitter accounts, and through other formal and informal communications. These types of public outreach are sufficient to warrant a fee waiver. *See W. Watersheds Proj. v. Brown*, 318 F. Supp. 2d 1036, 1041 (D. Idaho 2004) (noting cases holding "statements of intent to disseminate requested information through newsletters, popular news outlets, and presentations to public interest requestors, government agencies, and the general public sufficient to entitle an organization to a fee waiver").

SEACC staff members possess the experience and expertise necessary to evaluate the requested information and provide it to the public in a useful form. *Cf. W. Watersheds Proj.*, 318 F. Supp. 2d at 1040-41. The staff members are qualified to extract, synthesize, analyze, and convey the requested information to SEACC's supporters, other organizations, and the public at large in a way that will increase understanding of government actions affecting water quality and aquatic resources in Alaska. SEACC has access to scientists, lawyers, and communications professionals who specialize in public outreach. They use that expertise to analyze and evaluate information about governmental decisions affecting public resources and provide the analyses and evaluations to its supporters, other organizations, and the general public.

SEACC has a decades-long history of evaluating information similar to that requested here and distributing it to the public and encourage participation in governmental decision-making.

3. The Disclosure Will Contribute Significantly to Public Understanding.

Issues involving water quality and fish consumption are of significant public interest, especially in Alaska. The requested disclosure will increase public understanding of EPA's actions relating to the water quality. These records will provide recent information underlying the agency's decision-making, afford insight into the agency s decision-making processes, and highlight any competing viewpoints. These records will allow the requesting group to evaluate the agency's decision-making and the adequacy of the analyses, further facilitating public oversight of EPA operations.

4. SEACC Has No Commercial Interest in the Disclosure of the Information.

SEACC is a nonprofit organization that has no commercial interest in the requested records. *See McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (noting that FOIA's fee waiver provision is to be "'liberally construed in favor of waivers for noncommercial requestors'" (quoting legislative history)).

Please contact me if you have any questions, or if I can clarify this request in any way. I can be reached at 907-500-7133. As provided by FOIA, 5 U.S.C. § 552(a)(6)(A), we look forward to a reply within twenty working days. Thank you in advance for your assistance.

Sincerely, s/ Holly A. Harris Holly A. Harris Attorney Earthjustice

cc: Daniel Opalski, EPA Director Office of Water and Watersheds Dianne Soderlund, EPA Alaska Operations Office